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No. 427

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

SHERMAN H. SKOLNICK,

Petitioner,

vs.

CHARLES T. MARTIN, ARTHUR LILLY, and CHARLES R. PERRIGO,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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The petitioner respectfully asks this Court to grant a rehearing of its order of November 12, 1963, 32 LW 3176, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Seventh Circuit in the above entitled case as prayed for in the petition filed August 31, 1963.

REASONS FOR GRANTING THE REHEARING AND ISSUING THE WRIT.

The Court of Appeals' ruling in petitioner's case certainly would cause every witness, every deponent, to look with alarm upon the State's compulsory attendance of witnesses such as himself or herself. If such a witness is tortured, injured, and intimidated by agents of government, he cannot invoke the sanctions of the Federal courts. Such a ruling undermines the judicial processes by setting wrongdoers free to torture witnesses with impunity.

In the words of the respondents:

> "* * * any right to be free from bodily injury during a deposition in a civil case in a state court is not 'the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws.'" (See, Brief for Respondents in Opposition to Petition for Writ of Certiorari, page 4).

Wrongdoing, under pretense of authority, could hardly be more clearly stated or more boldly put, and still be within the bounds of courtesy.

The Court of Appeals ruling in petitioner's case is in direct conflict with an intervening decision of another Court of Appeals:

> "The defendants filed no answer but, pursuant to their motion, the District Court dismissed the complaint on the grounds that it failed to state a claim upon which relief could be granted and that it failed to show that the action was one arising under the Constitution and laws of the United States. The posture of the case requires us, for the purposes of this appeal, to take the plaintiff's allegations as true. Intimating no view on whether the plaintiff should ultimately prevail, *we hold that it was error for the District Court to dismiss the complaint without holding a hearing to determine the facts.*" *Lee v. Judge*, 4 Cir., 321 F. 2d 480, 483 (published October 7, 1963). (Emphasis added).

> "From his complaint it is evident that he claims substantial injury, under color of state law, at least to his right to the equal protection of the laws; and he also appears to rely upon the due process and the privileges and immunities clauses of the Fourteenth Amendment. *Federal jurisdiction over this complaint is well founded and the possible existency of state remedies does not affect this jurisdiction.* (Citing *Bell v. Hood*, 327 U.S. 678, 66 S. Ct. 773, 90 L. Ed. 939, 1946; *Monroe v. Pape*, 365 U.S. 167, 183, 81 S. Ct. 473, 5 L. Ed. 492, 1961; *McNeese v. Board of Education*, 373 U.S. 668, 83 S. Ct. 1433, 10 L. Ed. 2d 622, 1963; *Moss v. Jones*, 288 F. 2d 342, 344, 6th Cir., cert. denied, 368 U.S. 868, 82 S. Ct. 98, 7 L. Ed. 2d 65, 1961)." 321 F. 2d 480, at 484. (Emphasis added).

The petitioner in his Petition to this Court relies upon the same cases as the Court of Appeals for the Fourth Circuit. (See, Petition, at pp. 20-21; 23-24, and page 25).

The District Court never permitted the petitioner to be heard on the facts, or merits, of his case. Yet, the Court of Appeals affirms such a judgment. If Civil Rights cases in the Seventh Circuit are to be narrowly restricted primarily to school segregation cases and police brutality cases because this Court has already made authoritative pronouncements on such cases—then in all fairness, this Court should indicate that a citizen in the 7th Circuit will not be able to enforce his rights, or be heard on the merits of his Civil Rights case, *except in such cases*. It is totally unfair to hold forth empty promises, unenforceable Constitutional rights; Federal protections and sanctions unavailable in practice.

The petitioner, like every other citizen, looks to his national government for protection and, of course, to the courts of the national government. Protection is inherent in the very reasons for having government—it is the why

and wherefore of civilized society. The legislative debates preceding the passage of the Ku Klux Act, April 20, 1871 (now 42 U.S.C.A. Sec. 1983 and 1985) through which this petitioner has sought, apparently in vain, to secure the protections and sanctions of national government in those debates time and again can be found such language as:

> "American citizenship has but little worth if this law cannot be passed. How idle my declaration, 'I am an American citizen,' if all the rights which are seemingly made part and parcel of my possession as such a citizen may be at the mercy of assassins and the Government have not the right to protect me! *I do not wish to be told that I must look to my State for protection.* The Government claims my allegiance, and my life when it is in danger; why should it not protect me in these rights, for which that life may be given up?" Statement of Representative M. H. Dunnell of Minnesota, Congressional Globe, 42d Congress, 1st Session, Appendix 262. (Emphasis added).

Let us suppose that some fiend, some lawyer with a sadistic mind, wished to torture, intimidate, and injure an opponent of his client, and that opponent, a plaintiff in a state court lawsuit, happened to be physically disabled. How shall he dispose of such a person, once and for all, put an end to the lengthy litigation? How to get him out of the way, how to shut his mouth, yet not lay a hand on him [illegible] the plaintiff is, after all, a cripple, and not only a plaintiff but also a witness?

Such a fiend, knowing and seeing that the plaintiff is not only a paraplegic but has a twisted back as well, ponders the situation. "Sit" him to death! Now, there is an answer worthy of the most diabolical personality. For it is estimated that a paraplegic with a severe spinal condition can, literally, be "sit" to death in 3 to 5 hours on a chair without adequate armrests or back support. The

spine, unsupported by the paralyzed muscles, simply "folds up" to one side, impinging nerves, etc.

So, then all this demonic personality would have to do, particularly in Illinois, would be to see to it that he is appointed a State Court Deposition Examiner and then he can wield the power and the majesty of compulsory power—not in his capacity as a lawyer, but as an agent of government. In Illinois this awesome compulsory power compelling the attendance of witnesses is put into the hands of partisans, not impartial deposition examiners—but into the hands of the very person who is at other times the defendant's attorney. It is this "constituted authority" to which the deponent-litigant must look in vain for the Equal Protection of the Laws.

Now let us say that, by some horrendous misfortune of circumstance, the litigant-deponent's attorney is just recovering from a terrible accident and he walks haltingly with his leg in a partial cast and supported by a sturdy cane. And let us say, too, that the State Court judge, as it is the custom and practice, turns a deaf ear to the attorney's plea for minimum protection for the deponent. There we have the deponent, braces and crutches and all, in the first row of seats before the judge so that the judge might better see who it is that asks minimum protection. To no avail—protection denied, Court Order issued for the deposition to be held two hours later in the private enclosure of the Deposition Examiner.

There the citizen deponent is—at the mercy of sophisticated, modern-day assassins, in their carpeted torture chamber. The citizen deponent protests in vain, he cannot sit on *such* a chair. His attorney, arriving late because of his own slow-walking disability, protests in vain. Before the attorney arrives the deponent's crutches are

taken from him and hidden in a closet—he can leave, but how? and if he did leave, the sanctions of state government would fall down upon him, case dismissed, etc., etc. Four hours and twenty minutes the deponent survives the spinal pain and torment, protesting time and again for the record, his attorney protesting time and again. The tall Deposition Examiner is screaming down at the deponent, the Examiner hovers over this small hunched over person and snatches an envelope tucked into the deponent's pants. Fright, torment, pain, and then at times near-Stoic suffering.

Finally, after four hours and twenty minutes, the deponent tells the Deposition Examiner that the deponent will sue for being tortured so. The Deposition Examiner goes next door with the two persons who are on other occasions his clients, and there they whisper. The crutches are brought from their hiding place and the deponent is released, and on the way the deponent collapses and, delirious, he is transported to his home by his father who being an immigrant with no benefit of education is fearful to express his outrage against "government".

This is not supposition—this is, in fact, what happened.

By some blind miracle, the deponent has survived, but he cannot ambulate on his braces and crutches as theretofore. He has been further paralyzed. So two persons who at other times are clients of the Deposition Examiner, when he is in his capacity as attorney—these two persons, in attendance at the deposition, have thus successfully hindered the "constituted authority" from granting to the deponent-litigant the Equal Protection of the Laws. Partisans, wielding state power and clothed with it. Modern-day assassins, as effective as any gun invented. Liberty against these agents of government! Where is it to be found?

It is important to notice what the legislators said as they were to pass what is now 42 U.S.C.A. Sec. 1983 and 1985:

> "Where these gangs of assassins show themselves the rest of the people look on, if not with sympathy, at least with forbearance. * * * Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not * * *. In the presence of these gangs all the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes and feared detection. *Among the most dangerous things an injured party can do is to appeal to justice.*" Statement of Representative A. F. Perry of Ohio, Congressional Globe, 42d Congress, 1st Session, Appendix 78. (Emphasis added).

> "It is a monstrous assumption that this Government has not ample constitutional power to protect its own citizens because they happen to dwell inside the lines of a State that cannot *or will not* protect them * * *." Statement of Representative J. Packard of Indiana, Congressional Globe, 42d Congress, 1st Session, Appendix 281. (Emphasis added).

Is it to be said that not even four of the gentlemen of this Court would vote in good conscience to hear this petitioner's case? Are the Civil Rights Acts to be a dead letter? Unenforceable, particularly in the 7th Circuit?

A society that does not grant justice to the humble and to the weak, soon puts the seal of finality and condemnation upon itself. Apparently it is an idle declaration for this petitioner to declare "I am an American citizen." The Court of Appeals' decision contains an ominous threat to every witness—he cannot be protected. Depositions are thus to be the place where deponents, particularly the meek and the frail, can be tortured with impunity, and a wise citizen does well to arm himself before being compelled to go to such a place. And blind men can be knocked down

on the way to court. And the national courts cannot grant sanctions? Why? Because it is more expedient to wave away such a petitioner, to throw his unheard case in the wastebasket and not to grant him liberty against agents of government? Is it to be said that there are no Federal Constitutional limitations circumscribing the state compulsory deposition power?

The petitioner has made it his day-and-night undertaking, since the events of this case and another related case took place, to study in depth the law and the Constitution and the Civil Rights Acts, so that he might objectively argue his own case—hoping even to argue *pro se* before this Court the questions of misuse of state compulsory power and liberty against agents of government. But all, apparently, in vain.

This is a case, like *Ziang Sung Wan* v. *United States* (266 U.S. 1), involving the torture of an invalid, that gores the conscience and haunts the silent moment.

In petitioner's case, denial of certiorari is simply heartless and empty promise injustice ratified by way of a clipped word telegram of denial and an abrupt memorandum decision. The petitioner asks this Court to reconsider its denial of certiorari.

CONCLUSION.

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

SHERMAN H. SKOLNICK,
Petitioner Pro Se.

CERTIFICATE OF PETITIONER PRO SE

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

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Sherman H. Skolnick,
Petitioner, *Pro Se.*